LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 14 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 57

FAWCETT PUBLICATIONS, INC.,
Appellant,

vs.

DENNIT MORRIS,
Appellee.

APPEAL FROM THE SUPREME COURT OF OKLAHOMA.

PETITION FOR REHEARING.

HOWARD ELLIS,
DON H. REUBEN,
of
KIRKLAND, ELLIS, HODSON, CHAFFETZ
& MASTERS,
2800 Prudential Plaza,
Chicago, Illinois 60601,
Attorneys for Appellant.

THE GUTHROP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 57

FAWCETT PUBLICATIONS, INC.,

Appellant,

vs.

DENNIT MORRIS,

Appellee.

APPEAL FROM THE SUPREME COURT OF OKLAHOMA.

PETITION FOR REHEARING.

Although we are most reluctant to ask rehearing on the grounds we urge here, we are impelled to do so in the interests of justice and because of our obligation to both client and court.

The judgment of the Supreme Court of Oklahoma we seek to be reviewed was a five-to-four decision, with the majority sustaining the $75,000 judgment rendered below. As demonstrated in our jurisdictional statement (pp. 15-21), the majority's opinion squarely conflicts with all previously declared and long-established Oklahoma libel precedents. We first appeared in this case after all the proceedings in Oklahoma had been concluded, and we were

immediately struck by the Oklahoma Supreme Court's manifest departure from all of its prior decisions.

On April 8, 1964, one of the members of the Oklahoma Supreme Court who was in the majority below was indicted on five counts of federal income tax evasion; a copy of that indictment is appended to this petition. The terms of the indictment, combined with the fact that a former Justice of the same court was contemporaneously indicted for the same kind of violation, suggests a substantial implication of judicial misconduct.[1] Thus, the instant $75,000 judgment[2] is now under serious cloud, and should not, we submit, be permitted to become final and enforceable; a grave injustice could result unless this Court acts to prevent finality from occurring.[3]

We believe justice now requires that at very minimum the instant case be held by this Court until the situation in Oklahoma is further clarified. Only then can the Court determine what further action or proceedings are appropriate in light of those later events.

Or, we urge in the alternative, the Court may well now

1. The related indictment is No. 64-85 in the U. S. District Court for the Western District of Oklahoma and is against N. S. Corn, aka Nelson S. Corn.

2. With accumulated interest the amount is now in excess of $92,000.

3. There are twelve other libel suits now awaiting trial in the Federal District Court in Oklahoma arising from the same publication. (See jurisdictional statement, p. 4, n. 1. See also *Dodd* v. *Fawcett Publications, Inc.*, U. S. Court of Appeals for the 10th Circuit, No. 7418, ... F. 2d ..... decided March 10, 1964.) The 12 suits were held pending this Court's decision in the instant case. The plaintiffs in those 12 suits were teammates of the plaintiff Morris here. The now suspect Oklahoma Supreme Court decision here, if allowed to stand, will undoubtedly be strongly urged as a precedent against Fawcett in the twelve cases.

be persuaded that the very filing of the indictment itself is sufficient predicate for fully hearing the case on the merits. We do not think jurisdiction to review the judgment below is lacking; two members of this Court have expressly indicated the same belief by their dissents to the dismissal. Indeed, we cannot believe that the Court would have held our jurisdictional statement more than a year pending decision in *New York Times Co. v. Sullivan* (No. 39, this Term), all the while allowing interest on $75,000 at 6% to accumulate, if jurisdiction were so patently lacking as to warrant summary dismissal.

With revelation of the indictment appended hereto, we respectfully submit the Court should now either grant this petition for rehearing and accord plenary review of the judgment, or at the very least, suspend action in this case pending subsequent developments in Oklahoma.

Respectfully submitted,

HOWARD ELLIS,
DON H. REUBEN,
of
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS,
2800 Prudential Plaza,
Chicago, Illinois 60601,
Attorneys for Appellant.

CERTIFICATE OF COUNSEL.

I, Don H. Reuben, counsel of record for Appellant Fawcett Publications, hereby certify that the above and foregoing Petition For Rehearing is presented in good faith and not for delay.

DON H. REUBEN,
of
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS,
2800 Prudential Plaza,
Chicago, Illinois 60601.

APPENDIX "A."

IN THE UNITED STATES DISTRICT COURT
for the Western District of Oklahoma.

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* EARL WELCH, *Defendant*.	No. 64-86 Criminal (26 United States Code Section 7201).

INDICTMENT.

THE GRAND JURY CHARGES:

COUNT I.

That on or about the 15th day of April, 1958 in the Western District of Oklahoma, Earl Welch, late of Oklahoma City, Oklahoma, who during the calendar year 1957 was married, did wilfully and knowingly, attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1957, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Oklahoma City, at Oklahoma City, Oklahoma, a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $7,121.57 and that the amount of tax due and owing

thereon was the sum of $1,441.13, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the sum of $15,465.28 upon which said taxable income there was due and owing to the United States of America an income tax of $3,712.96.

In violation of Section 7201, Internal Revenue Code; 26 U. S. C., Section 7201.

COUNT II.

That on or about the 10th day of April 1959, in the Western District of Oklahoma, Earl Welch, late of Oklahoma City, Oklahoma, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1958, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Oklahoma City, at Oklahoma City, Oklahoma, a false and fraudulent income tax return, wherein he stated that his taxable income for said calendar year was the sum of $8,582.03 and that the amount of tax due and owing thereon was the sum of $1,942.40, whereas, as he then and there well knew, his taxable income for said calendar year was the sum of $17,926.02 upon which said taxable income there was owing to the United States of America an income tax of $6,110.80.

In violation of Section 7201, Internal Revenue Code; 26 U. S. C., Section 7201.

COUNT III.

That on or about the first day of April, 1960, in the Western District of Oklahoma, Earl Welch, late of Oklahoma City, Oklahoma, who during the calendar year 1959 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by

him and his wife to the United States of America for the calendar year 1959, by filing and causing to be filed with the District Director of Internal Revenue of Oklahoma City, at Oklahoma City, Oklahoma, a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $5,174.89 and that the amount of tax due and owing thereon was the sum of $1,004.33, whereas, as he then and there well knew, their joint taxable income for said calendar year was the sum of $9,424.77, upon which said taxable income there was owing to the United States of America an income tax of $1,996.29.

In violation of Section 7201, Internal Revenue Code; 26 U. S. C., Section 7201.

COUNT IV.

That on or about the 24th day of March, 1961, in the Western District of Oklahoma, Earl Welch, late of Oklahoma City, Oklahoma, who during the calendar year 1960 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1960, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Oklahoma City, at Oklahoma City, Oklahoma, a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their taxable income for said calendar year was the sum of $4,639.38 and that the amount of the tax due and owing thereon was the sum of $867.39, whereas, as he then and there well knew, their joint taxable income for the said calendar year was the sum of $14,257.61 upon which said taxable income there was owing to the United States of America an income tax of $3,345.88.

In violation of Section 7201, Internal Revenue Code; 26 U. S. C. Section 7201.

COUNT V.

That on or about the 2nd day of April 1962, in the Western District of Oklahoma, Earl Welch, late of Oklahoma City, Oklahoma, who during the calendar year 1961 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1961, by filing and causing to be filed with the District Director of Internal Revenue, for the Internal Revenue District of Oklahoma City, at Oklahoma City, Oklahoma, a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their income on which they computed their income tax for the calendar year was the sum of $8,280.72 and that the amount of tax due and owing thereon was the sum of $1,742.99, before applying a dividend credit of $50.99, whereas, as he then and there well knew, their joint income on which their income tax was to be computed for the said calendar year was the sum of $19,753.08 upon which said income there was owing to the United States of America an income tax of $5,196.05.

In violation of Section 7201, Internal Revenue Code; 26 U. S. C. Section 7201.

A TRUE BILL:

/s/ (SIGNATURE)
Foreman.

/s/ (SIGNATURE)
United States Attorney.